UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/SR.1940
10 August 2001

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

Seventy-second session

SUMMARY RECORD OF THE 1940th MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 17 July 2001, at 3 p.m.

Chairperson: Mr. BHAGWATI

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GE.01-43564 (E) 190701 100801

The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 5) (continued)

Second periodic report of Guatemala (CCPR/C/GTM/99/2; CCPR/C/71/L/GTM; HRI/CORE/1/Add.47)

1. At the invitation of the Chairperson, the members of the delegation of Guatemala took places at the Committee table.

2. The CHAIRPERSON welcomed the delegation of Guatemala and explained the procedure to be followed during its dialogue with the Committee.

3. Mr. ALVARADO ORTIGOZA (Guatemala) welcomed the opportunity for his country to show its commitment to international cooperation for the protection of human rights by appearing before the Committee. His country had cooperated with the United Nations and Inter-American human rights systems. At the last two sessions of the Commission on Human Rights, Guatemala had reported on its efforts to combat involuntary disappearances, discrimination against women, racism and infringement of the rights of children, indigenous peoples and migrant workers, as well as on the follow-up it had given to its commitments in those areas. The Government had also taken action to implement the recommendations of the human rights experts who had visited the country. The mandate of the United Nations Verification Mission in Guatemala (MINUGUA), which monitored the peace agreements, had been extended to 2003.

4. The Guatemalan Government had sought to establish closer links with the Inter-American Commission on Human Rights, with the aim of resolving over 100 complaints against Guatemala received by the Commission. Some of the cases had been resolved, and financial compensation had been paid to the families of a number of individuals, including street children, who had disappeared or suffered summary execution. Talks were currently under way concerning a number of cases, including the massacre at Las Dos Erres in 1982. Families who had survived the massacre had been awarded almost 2 million US dollars in compensation, and an educational video showing the facts of the incident had been produced. The Government and the Inter-American Commission were also discussing the disappearance of the journalist Irma Flaker, the bloody eviction of workers from La Exacta estate in 1994, and an incident involving workers at the Ministry of Culture, with the aim of restoring the victims' reputations and paying compensation to their families.

5. Guatemala was a small country with a small population and a tragic history. Some groups were still under the control of powerful oligarchies in a pre-capitalist form of employment which was close to slavery. It had not yet proved possible to create a national programme for the spread of true democracy.

6. The Agreement on Firm and Lasting Peace, signed in 1996, had put an end to 36 years of civil war without eradicating the causes of conflict. However, the Government had committed itself to making Guatemala a democratic country which respected human rights and submitted to the international political and jurisdictional systems of monitoring and protecting those rights. The Government would compensate the victims - or the families of victims - of the crimes and other human rights violations committed by previous governments: it would restore the victims' reputations and guarantee them justice. The Government would promote a democratic spirit in public administration by observing, respecting and defending human rights, providing training and education in basic human rights principles and increasing public awareness of human rights bodies, instruments and procedures.

7. The Government had frequently expressed its appreciation for the cooperation and support provided by international human rights bodies, but it also called upon them to understand the difficult task it faced and the length of time needed to achieve results. Guatemala still had problems with security and the administration of justice, stemming from the loss of institutional credibility under earlier regimes.

8. Institutional monitoring and protection mechanisms must be strengthened in order to achieve effective respect for human rights. Unfortunately, human rights organizations, with their persistent anti-State attitudes, continued to widen the gap between State and society, and the international human rights bodies must be aware of that fact. However, he was happy to report the goodwill and initiative displayed by the Guatemalan Commission for Human Rights in a joint effort to identify viable mechanisms for speedier implementation of the Human Rights Committee's recommendations and those of other human rights monitoring bodies.

9. The fundamental human right to life was now better respected by the economic, social and political elites in Guatemala. Nevertheless, the problems of social exclusion, illiteracy, poverty and inhuman living conditions still reduced the life expectancy of most of the population. In addition, the "dirty war" waged by the insurgents and the armed forces had left a legacy of pain, grief and desire for revenge. Summary and extrajudicial executions had become commonplace throughout the country among all groups in society. The "death squads", which were the remnants of the institutionalized apparatus of repression, carried out "social cleansing" and lynchings of alleged "delinquents".

10. The right to life was not yet fully respected in Guatemalan institutions. The death penalty had not yet been abolished. For humanitarian reasons, it was no longer imposed on elderly people, children or women, and legislation had been adopted to guarantee due process of the law, the right of appeal and the possibility of seeking a pardon. Nevertheless, in the present climate, it was not feasible to abolish the death penalty completely, since that might provoke a wave of revenge killings with deadlier consequences than the death penalty itself. Which should the Government protect first, a principle of humanitarian law or life itself?

11. The problems which Guatemala still experienced in the administration of justice were likewise a legacy of the country's difficult past. The prosecution of those responsible for the murders of the opposition leader Jorge Carpio and the anthropologist Myrna Mack, for example, had been hampered by military pressure. A number of major industrialists had collectively

defrauded large sectors of society and State institutions, but no individuals had ever been brought to justice. Organized crime, in the form of kidnappings and drug trafficking, had increased the pressure on the underfinanced security, court and prison services.

12. Regarding the rights of minorities - or rather of the indigenous majority - constitutional reforms which would have increased the rights of indigenous peoples had been rejected in a referendum (see paragraph 420 of the second periodic report). The rights of indigenous peoples were protected by articles 66-70 of the Constitution and by the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization, which had constitutional status. Further Government commitments were included in the Agreement on Identity and Rights of Indigenous Peoples, signed in 1995 (see paragraph 432).

13. Every effort had been made to involve indigenous peoples in the bodies established under the Agreement, to develop new legislation and legal standards and to promote intercultural relations. The education of indigenous children formed a major part of the programme of educational reform which was currently being implemented by the relevant Ministry. The Presidential Office for Legal Assistance and Resolution of Land Disputes (CONTIERRA) was working to resolve land claims and promote the land rights of indigenous peoples. A new Electoral and Political Parties Law was being drawn up, which would enable women and indigenous peoples to participate more fully in the political process, although he warned that progress in that direction would be relatively slow.

14. A decentralization plan had been introduced which would redistribute State assets and pave the way for increased citizen participation at community and municipal government level. A new General Decentralization Law, Municipal Code and Law on the Development Council System were awaiting approval by Congress. They had been drawn up in consultation with the representatives of indigenous peoples on the Joint Committee on Reform and Participation.

15. The Education Law and the Health Code, which also made provision for decentralization and community participation, had not yet fulfilled the aim of fostering an improvement in relations between the State and society. The Government hoped that its efforts to improve the process of democratic planning and joint policy implementation would help it to combine its political agenda with the public agenda of civil society.

16. Not all the replies that would be given to the Committee's questions reflected satisfactory progress. Some good results had been achieved, but little had been done in some areas. The Government's efforts had been hampered by the activities of anti-democratic forces, but it was doing its best to surmount those obstacles.

17. The CHAIRPERSON invited the delegation of Guatemala to reply to questions 1 to 12 of the list of issues (CCPR/C/71/L/GTM), relating to the role of the army and military police in maintaining public security and running prisons; action to combat the apparent deterioration in the human rights situation; results of changes in the Public Prosecutor's Department; extrajudicial executions and torture committed by National Civil Police officers; efforts by the Public Prosecutor's Department (Ministerio Público) to overcome impunity in respect of serious human rights violations; impunity of the Commission for Historical Clarification (Comisión de Esclarecimiento Histórico); action taken to bring to justice the perpetrators of 26 extrajudicial

executions and 9 attempted executions; the death penalty; the execution of two persons on 29 June 2000; human rights violations by police and military personnel; pre-trial detention; and complaints made to the Office for the Protection of Prisoners and Due Process.

18. Mr. ALVARADO ORTIGOZA (Guatemala), replying to question 1 on the role of the army and military police, said that the Government had promulgated decrees which enlisted the assistance of the army and military police in maintaining public security. Article 249 of the Constitution stated that the army should provide assistance at times of emergency or national disaster. The Government considered that the current situation in Guatemala - increasing violence and organized crime by former paramilitaries in the service of powerful groups - constituted an emergency.

19. Technically, the decrees were incompatible with the provisions of the peace agreements, but the State had to guarantee the safety of individuals. The civil security forces needed to double their current membership of 18,500. The police service was underfinanced because changes to the tax system, which would have increased the funding available, had been blocked by conservative groups.

20. Replying to question 2 on action to combat the apparent deterioration in the human rights situation, he said that in some cases conservative groups which were historically opposed to democracy and human rights had been responsible for the harassment of human rights activists, which had then been blamed on the Government. The Government was taking action to increase security and protect human rights, but it had not yet achieved all its aims. It shared the concerns of the United Nations Verification Mission in Guatemala (MINUGUA) and the Human Rights Committee, and was accordingly introducing institutional reforms and preparing a new timetable for fulfilment of its human rights commitments.

21. The question also referred to measures to counteract the climate of intimidation. Judges subjected to threats, harassment or intimidation, were offered protection by a security committee which considered individual complaints and took action within the limits of its budgetary constraints. In March 2000, the Office for the Protection of Trial Witnesses and Persons involved in the Administration of Justice had introduced a system of inter-institutional investigation of complaints. A prosecutor had been specifically assigned to those cases, and the judiciary had compiled a list of all complaints of threats or intimidation suffered by judges. A system set up in collaboration with the Ministry of the Interior had offered protection to 74 judges who had been victims of insults, anonymous telephone calls or violence. The Government had collected information about delinquency, threats against judges and the measures required for their protection.

22. Replying to question 3 on the results of changes in the Public Prosecutor's Department, he said that a number of projects had been implemented with the support of the Ministry of Justice and international organizations, principally MINUGUA and the United Nations Development Programme. The main project was a computer system to record complaints and their investigation: the system now comprised 31 networks covering the entire country. In July 2000, a new type of form had been introduced to improve the collection of statistics and monitoring of complaints.

23. Concerning question 4 on extrajudicial executions and torture committed by National Civil Police officers, he said that isolated acts of torture by police officers were the legacy of the unregulated activities of the armed forces during the civil war. The Committee's question was couched in very general terms, and he found it difficult to answer. Cases verified by MINUGUA which involved police officers were referred to the Office of Professional Responsibility. He would submit statistics to the secretariat about the number of complaints and the number of officers found guilty. MINUGUA also referred cases which it had verified to the Public Prosecutor's Department.

24. Question 4 also referred to measures to strengthen the Office of Professional Responsibility (ORP). Joint training courses were organized to improve coordination between the ORP and the Public Prosecutor's Department, particularly in the areas of crime-scene work, collection of evidence and administration of justice.

25. The Government had set up a "friendly police" system to improve the service provided to the public. A special subdivision would eventually be set up to deal with human rights and services for citizens and victims of crime. At the end of 2000, the Presidential Commission for Human Rights (COPREDEH) had signed an agreement with the International Committee of the Red Cross on training and cooperation in the field of humanitarian law, with the aim of increasing respect for fundamental human rights and curbing abuses by police officers responsible for security in the interior of the country.

26. The National Institute of Public Administration had developed a training plan for all public service employees, including police officers, which provided for the application of fundamental human rights principles in all aspects of their work.

27. Replying to question 5 on the efforts of the Public Prosecutor's Department (Ministerio Público) to overcome impunity in respect of serious human rights violations, he said that the State recognized impunity as one of the main obstacles hampering efforts to strengthen the rule of law. The Public Prosecutor's Department had increased its staff and organized training courses by experts in criminal procedure. It offered legal advice to prosecuting authorities in dealing with criminal cases. The central office of the Public Prosecutor's Department monitored the investigations carried out by district offices. Some action had been taken to combat impunity.

28. Replying to question 6 on the Commission for Historical Clarification (CEH), he said that since May 2000, in recognition of the moral responsibility of the State in that regard, a number of strategies had been attempted in order to comply with the peace agreements. One of those strategies was the policy of national reconciliation, whereby the Presidential Secretariat for Peace (SEPAZ) worked with the Office of the Human Rights Procurator and the Office for the Defence of Indigenous Women to implement the recommendations of the CEH. One example of the fight against impunity was the judicial procedure set in train following the murder of Bishop Gerardi, which had resulted in a court decision naming two army officers as the perpetrators, and a priest found guilty of indirect participation in the crime.

29. To help bring about national reconciliation, on 27 June 2001 a National Committee for Peace and Concord had been established by decree, an administrative procedure which was much speedier than legislative action, although Parliament was expected to confirm the decree in the near future.

30. In March 2000 the Inter-American Commission on Human Rights had taken up two cases of human rights violations in Guatemala. Agreement had been reached with the Commission in Washington, on 13 August 2000, on a friendly settlement for those two cases as well as for the cases concerning the disappearance of the journalist Irma Flaker and the "La Exacta" estate eviction. As a result of that agreement, it had been decided to pay compensation to the families of four street children who had been murdered, and to the families of two people summarily executed in 1996. In those cases, the Government had acknowledged its responsibility for failure to uphold the constitutional right to life and the rights of the child, to comply with judicial safeguards and to investigate human rights violations. Pursuant to its obligations under an agreement reached on 7 December 2000, it was paying compensation to the relatives of the victims of the massacre at Las Dos Erres, where a monument to the victims was under construction. A documentary film commemorating the massacre was to be shown on 22 July 2001 at 8.45 p.m., and the broadcast would be repeated twice over the next three months. Under an agreement with human rights organizations on the payment of compensation, almost US$ 2 million in total was being paid out to the 59 families of approximately 311 victims of the massacre. The Supreme Court had announced the reopening of a number of other cases, involving impunity, including the disappearances of the journalist Jorge Carpio, the anthropologist Myrna Mack and the journalist Irma Flacker, cases which dated back 21 years. The Inter-American Press Association was planning a special event for 5 September, the birthday of Irma Flacker, to call attention to the importance of press freedom and commemorate the deaths of a number of journalists killed in the course of their duties.

31. With regard to the subsidiary question, under question 6, concerning the outcome of the judicial complaint against General Garcia, former President of the Republic, the former Commander-in-Chief of the Land Armed Forces and the former Minister of Defence, he said that with the lapse of time there had been some difficulty in ascertaining the circumstances of the killings in which they were said to have been implicated. The Public Prosecutor's Department was obliged to conduct a lengthy preliminary investigation in order to verify dates of alleged incidents, names of alleged victims and places of alleged crimes. The responsibility of the presumed perpetrators could only be investigated once those details had been confirmed. However, the Public Prosecutor's Department had undertaken to provide the Committee and other national and international organs with the information requested. In many lower-profile cases, there had been little success in investigating violations. That was attributable partly to fear, which made people reluctant to cooperate, especially in cases of homicide and extrajudicial killings. A climate of trust had to be restored and witnesses properly protected. In cases where witnesses had been willing to testify, it had been possible to achieve considerable progress.

32. Turning to questions 7-12 on the right to life (article 6 of the Covenant), he said that it was very difficult to give an answer to question 7, concerning action to bring to justice those responsible for the 26 extrajudicial executions and 9 attempted executions reported in the period

from 1 December 1999 to 30 June 2000. The question did not mention the names of victims or the dates of the incidents. However, an answer would be given as soon as the information was available.

33. On question 8 (a), concerning the continuing application of the death penalty to men aged between 18 and 60, he explained that the death penalty was an exceptional sanction and had been regarded as such even under the previous Constitution. It was surrounded by every possible judicial safeguard. In any case, it was gradually being abolished, the abolition process having begun under previous Constitutions by exempting women and men over 60, with a view to eventual complete abolition.

34. On question 8 (b), concerning the extension of the death penalty to cases of kidnapping, he agreed that it was incompatible not only with the Covenant but also with the American Convention on Human Rights. On more than one occasion, the appeal courts had revoked a death sentence imposed for kidnapping, on the ground of non-conformity with article 46 of the Constitution, which took precedence over international human rights instruments. However, the media had reacted negatively to those decisions, and there was as yet no body of opinion in favour of declaring the death penalty unconstitutional in such cases.

35. On question 9, concerning the renewal of executions leading to the execution of two persons on 29 June 2000, he reiterated that the death penalty had never been fully abolished. There was no policy in Guatemala of "renewing" executions. Long periods of time elapsed without any executions taking place, because capital punishment presupposed protracted and complicated criminal proceedings. The right to seek a presidential pardon (question 9 (a)), was based on article 4 (6) of the American Convention on Human Rights, and was also in keeping with article 46 of the Constitution of Guatemala, although the procedure for seeking a pardon was not defined in law. Thus the President could grant a pardon or commute a death sentence. The Government was currently reviewing the arrangements for pardons, with a view to placing them on a more substantive basis. In the recent case of a man condemned to die by lethal injection, a pardon had been granted on the basis of his lawyer's contention that the trial had not been conducted in the language of the accused, and that no direct evidence had been brought against him.

36. Question 9 (b) of the list of issues asked how the televising of an execution could be justified in the light of domestic law (paragraph 180 of the report) and article 10 of the Covenant. The procedure for executions was governed by Decree 22-98, replacing Decree 100-96 which placed restrictions on the broadcasting of executions, those restrictions having been declared unconstitutional by the Constitutional Court on 29 April 1998. According to the principle of free access to sources of information, the media now had access to executions and the discretion to decide what to do with the information they obtained. He pointed out that the persons who controlled the media were not well versed in ethics or human rights, but were quick to complain about restrictions on the freedom of their sector. State coordination with the media should be promoted through programmes of human rights education.

37. Concerning question 9 (c), he said that various remedies were available to the persons now in prison under sentence of death, including appeals to the Court of Cassation and petitions for a pardon or for commutation of their sentence. If a death sentence was confirmed on appeal, the appellant could then apply to the Supreme Court. A final sentence could also be reviewed on the basis of the circumstances of the intended execution or a change in circumstances as contemplated in the Criminal Code following confirmation of the sentence, such as the onset of mental illness. The judgment could also be further appealed if fresh evidence was adduced in favour of the appellant. The constitutional remedy of amparo was also available.

38. In reply to question 10 concerning the work of the Office of Professional Responsibility in the police force and of the army high command in bringing to justice perpetrators of human rights violations in their ranks, he said that both institutions had demonstrated a clear will to impose disciplinary sanctions on those responsible for human rights violations, and to seek prosecutions where the violations constituted criminal offences. The army high command had suspended some officers from duty, and the police had imposed internal disciplinary sanctions on others. Criminal sanctions might also be applied. Since May 2000, investigations had been proceeding into the 183 extrajudicial executions mentioned in question 10. However, the authorities had to act on the basis of very limited information. Details of the victims as well as of the alleged perpetrators were needed in order to carry out immediate and thorough investigations. In many cases, it was found that investigations duplicated others or were inconclusive, and thus had a negative impact. Moreover, potential witnesses were often too frightened to come forward.

39. On question 11 (a) concerning the measures being taken to reduce the proportion (65 per cent) of the prison population held in pre-trial detention, he said that the post of public defender had existed since 1994 under the new Criminal Code, and there were now 325 public defenders working full time, as well as 300 lawyers defending clients on a private basis. In 2000, the public defenders had handled over 20,000 cases, and 5,327 in 2001. Legal aid had thus far been provided in 3,547 trials, accounting for 37 per cent of defendants. The availability of legal aid and of the services of the public defenders had considerably reduced the number of prisoners in pre-trial detention. In collaboration with the police, fines were often imposed instead of custodial sentences. Additional premises were being built to house courtrooms, accommodation for detainees and legal aid offices. A pilot programme was also being implemented, on the basis of a study by MINUGUA, to speed up cases due to be heard by the courts, and as a result 223 prisoners in pre-trial detention had been released. A number of recommendations were under study to reduce the pre-trial prison population further, including a project submitted in May 2001 to the National Commission to monitor and support the strengthening of justice.

40. The Code of Criminal Procedure was being reformed (question 11 (b)) by the introduction of mobile courtrooms and through joint discussions involving the judiciary and the legal profession on methods of expediting trials. The longest period of pre-trial detention on record, as of 31 December 2000, was that of an individual, who had been charged with plagiarism, forgery and kidnapping; he had been in detention for six years.

41. In reply to question 12 concerning complaints by prisoners, he said that, according to the annual report of the Office of the Human Rights Procurator, the Office for the Protection of Prisoners and Due Process had received 44 complaints between 1 January and 31 October 2000, and had ruled on 30 of them. Complaints most frequently related to prison conditions and access to rehabilitation programmes. The Prisons Directorate had responded by taking a range of steps to improve rehabilitation schemes, as well as recreational, religious and sporting opportunities in prisons.

42. Ms. MEDINA QUIROGA said that the head of the delegation of Guatemala had admitted to not being entirely satisfied with his replies, and the Committee shared his disappointment. The hope surrounding the consideration of Guatemala's initial report had evaporated as the human rights situation in the country had deteriorated. The replies of the delegation had been lacking in precision in many areas, and she would appreciate a more detailed response to question 1 in particular.

43. On the issue of impunity, the technical difficulties cited were less important than the lack of political will and failure to guarantee the rule of law. The only means by which emerging democracies could consolidate the rule of law was by fostering public confidence in democracy. There appeared to be a contradictory attitude to impunity. For instance, the friendly settlement in the Inter-American Commission on Human Rights with regard to the massacre at Las Dos Erres, following which over 160 bodies, including those of 60 children, had been discovered, was to be welcomed. Yet at the same time the Constitutional Court had granted amnesty, under the Law on National Reconciliation, to the commanding officer responsible on the ground that the military had taken action in order to prevent the unlawful activities of guerrillas. The State therefore recognized its responsibility in one sense, and denied it in another. According to paragraph 40 of the report, there had been three cases in which senior officers had been suspended and placed at the disposal of the civil judicial authorities. Yet according to the report of the Commission for Historical Clarification, the military had been responsible for over 90 per cent of human rights violations, and during 36 years of internal conflict, there had been 200,000 disappearances. In the light of those statistics, three instances of senior officers being held to account did not inspire confidence that impunity was being tackled successfully. Moreover, it had not been possible to bring charges of genocide against the President of the Congress, General Efrain Rios Montt, because he was protected by immunity. She asked what steps would be required to remove that immunity, and whether the Government intended to take such steps.

44. The Commission for Historical Clarification and the Project for the Recovery of Historical Memory had both recommended the establishment of a commission to ascertain the fate of missing persons. Could the delegation indicate whether such a commission had been established and, if so, what its findings had been? The report submitted to the United Nations Working Group on Disappearances contained information on 61 out of 13,000 cases. What was the situation concerning the remainder of those cases, and how many other cases remained outside the scope of investigations in the light of the figures given by the Commission for Historical Clarification? She requested information on the fate of missing children, particularly in view of the existence of reports on the trafficking of children taken from their parents by the armed forces.

45. Proponents of the campaign to put an end to impunity, such as the association "Mujeres Vamos Adelante" were victims of threats and violence. It appeared that the security of non-governmental organizations (NGOs) had not improved since the 1980s, and trade union leaders, judges and lawyers had also been threatened or even lynched. She would appreciate more details on what protection was being afforded to judges by the Supreme Court.

46. She understood that a state of emergency had been declared in Guatemala as a result of the escape of 78 prisoners, which entailed the suspension of articles 5, 6, 9 and 26 of the Constitution. Article 5 provided that all citizens had the right to do anything not specifically forbidden by law, and were not obliged to follow any illegal instruction. The suspension of that article was equivalent to the suspension of the rule of law. She asked whether there was a basis in the Constitution for declaring a state of emergency in such circumstances, and whether the Government had notified the Secretary-General of the United Nations that it had taken such a measure.

47. The delegation had indicated that the Court of Appeal, pursuant to the American Convention on Human Rights, had not applied the death penalty in cases of kidnapping that had not led to the death of the victim. However, the Constitutional Court had ruled that the death penalty was applicable in such cases. Did that imply that internal legislation took precedence over the American Convention?

48. The delegation had acknowledged that former members of the armed forces still held considerable power, and the kinds of threats made against proponents of the campaign against impunity suggested that agents of the State might be involved. It was clear that the rule of law in Guatemala was currently extremely precarious.

49. Mr. SOLARI YRIGOYEN said that he recognized the progress made in Guatemala since the signing of the Agreement on Firm and Lasting Peace on 29 December 1996. The new situation made it possible to tackle the problem of impunity, and it was the Government's responsibility to ensure that it took advantage of that situation. While it had ratified the Inter-American Convention on the Forced Disappearance of Persons, it was the only Government to have made a reservation to the Convention. That was particularly serious in a country with such a tragic record of disappearances. It had, however, ratified the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), its cooperation with the Inter-American Commission on Human Rights had proved fruitful, and it had ratified ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. He attached considerable importance to the official recognition by the Guatemalan President of the State's responsibility for massacres such as that at Las Dos Erres. It was essential that the President's commitment to reaching a friendly settlement in that and other cases was followed up, not only by the Guatemalan authorities, but also by regional organizations such as the Inter-American Commission on Human Rights.

50. The justice system in Guatemala still appeared incapable of resolving the problems it had inherited. What reforms did the Government intend to make to the Penal Code, and how did it intend to limit the jurisdiction of the military courts? The right to a fair trial was frequently violated, leading to violations of many other rights. The Government had fulfilled its

commitment to increase the budget for the justice system by over 50 per cent. Yet there were many issues that required clarification. Did military intelligence agents take part in criminal investigations, in breach of the Code of Criminal Procedure? Many reports suggested that fewer than 10 per cent of murder cases came to trial, which meant that the replies given by the delegation to questions 6, 7 and 10 were unsatisfactory. Question 10 referred to no fewer than 183 extrajudicial killings, and the delegation had failed to give information about any of them. He asked for further details concerning the sentences imposed on the persons found guilty of the murder of Bishop Gerardi. He expressed concern over the number of lynchings, which undermined the rule of law and the right to a fair trial. According to the United Nations Verification Mission in Guatemala (MINUGUA), 310 lynchings or attempted lynchings had taken place since the peace agreements had been signed. In a typical case on 18 March 1999, a crowd of 3,000 people had captured five people suspected of belonging to a criminal organization in Tzuazabé, Santa Lucía La Reforma, and burned them alive. When the forces of order, together with representatives of the Public Prosecutor's Department and MINUGUA, had arrived shortly afterwards, they had been threatened with the same fate. A judge named Alvaro Hugo Martínez had been stoned to death on 13 March 2001. Had that case been resolved and had anyone been arrested in that connection? Could the delegation comment on whether the armed forces were responsible for some of the lynchings, and explain what measures the Government intended to take in order to re-establish the authority of official institutions? How did it plan to put an end to the phenomenon of lynchings?

51. Ms. CHANET said that some parts of the report were refreshingly candid, for instance paragraph 4 where the State party admitted that not all of the rights protected by the Covenant were fully respected. She shared the concerns expressed by earlier speakers with regard to the reports of intimidation and lynchings. She requested more details concerning the Government's plans to tackle impunity, particularly with regard to demilitarization and the commissions of inquiry into the fate of disappeared persons. If national reconciliation was to be made possible, the people of Guatemala needed to come to terms with the past. What efforts were being made in accordance with article 16 of the Covenant to establish the legal status of missing persons?

52. According to paragraph 146 of the report, only one state of emergency had been declared in the past five years. Now that another had been declared following the escape of prisoners, she asked whether there had been any other cases that had not been mentioned. The powers made available to the authorities in states of emergency, as indicated in paragraph 142, appeared to exceed the bounds stipulated in article 4 of the Covenant. Precisely which rights protected by the Covenant were derogable in states of emergency, and did they correspond to those mentioned in article 4 (1)?

53. The situation with respect to the death penalty was extremely confused. How many people had actually been executed between 1998 and 2000? The delegation had admitted that the extension of the death penalty to cases of kidnapping or abduction under article 201 of the Criminal Code was incompatible with article 6 of the Covenant and that certain courts had taken that fact into account. She wished to know whether the Government planned to bring its legislation into line with the Covenant.

54. Article 6 (4), of the Covenant stipulated that all persons sentenced to death had the right to seek pardon. Again, the situation was unclear. The right appa...ntly no longer existed in Guatemalan legislation and depended entirely on the whim of the incumbent President of the Republic. It was essential to establish a right of pardon that was compatible with the Covenant.

55. If she had correctly understood the delegation's reply to question 11, persons had been held for up to six years in pre-trial detention, a waiting period that was totally unacceptable.

56. Article 6 of the Guatemalan Constitution stipulated that arrested persons should be brought before "the competent judicial authority" within six hours. She asked the delegation to specify which judicial authority was meant. Would a prosecutor qualify as such an authority? Article 8 of the Constitution guaranteed the right of an arrested person to legal counsel at all stages of the police and judicial proceedings. Was that right always respected in practice? She also wished to know whether the arrested person had access to a doctor and whether family members were contacted and informed of his or her whereabouts.

57. Pursuant to article 262 of the Code of Criminal Procedure, one of the circumstances taken into consideration in deciding whether to place a person in pre-trial detention was "the punishment expected to result from legal proceedings". Drawing attention to the principle of the presumption of innocence, she suggested that it might be preferable to refer to the legally prescribed penalty for the offence charged.

58. Mr. KLEIN, noting that States parties were required to report on "progress made in the enjoyment" of Covenant rights, regretted the apparent lack of progress in that regard in Guatemala. According to the MINUGUA report referred to in question 2 and the seventh regional report of the Central American Human Rights Commission, Guatemala led the region in terms of violations of civil and political rights. The Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers had stated in March 2001 that the system continued to suffer from grave deficiencies, that only 10 per cent of all homicide cases went to trial, with very few resulting in convictions, and that indigenous people faced discrimination in seeking access to justice.

59. While public security was a legitimate State concern, the State party's obligation to protect the right to life was paramount. Unless it ensured that the means it employed to maintain security were compatible with its international obligations, a vicious circle would ensue. Certain sections of the population would dispute the legitimacy of State action and take up arms in self-defence. Publicly televised executions were an example of such action. Moreover, improperly conducted executions in which it took the victim up to 18 minutes to die constituted cruel, inhuman and degrading treatment.

60. In a country which still practised capital punishment, the requirement of due process was particularly important. The Committee had been informed of a case in which a non-Spanish-speaking member of an indigenous community had been convicted and sentenced to death in a procedure without interpreters. The sentence had subsequently been commuted by the President but even a long custodial sentence under such circumstances constituted a clear breach of the Covenant. The proper reaction to flawed proceedings was either a retrial or release of the accused.

61. He understood that the Law of 12 May 2001 had rescinded the President's power to grant a pardon, in violation of article 6 (4) of the Covenant. There were at least three good grounds for granting a pardon: where a general or abstract law failed to ensure justice in individual cases; where a pardon was the only feasible response to international demands; and where a trial was vitiated by procedural flaws. According to one NGO source, the administration of justice in Guatemala was in a parlous state.

62. He was also disturbed by the fact that Guatemala had, on several occasions, failed to implement provisional precautionary measures called for by the Inter-American Commission on Human Rights on the ground that such measures were incompatible with State sovereignty. That kind of attitude to human rights monitoring bodies was no longer acceptable under international law.

63. He welcomed the establishment of the National Committee for Peace and Concord and the action taken against the murderers of Bishop Gerardi. Unfortunately, however, full light had not yet been shed on the case.

64. According to a recent article in Human Rights Quarterly by the Chairman of the Commission for Historical Clarification, the Government's response on 6 March 1990 to the Commission's report had been to state baldly that nothing needed to be done. The Commission had recommended that the President apologise publicly on behalf of the State to the people of Guatemala for the acts described in the report and assume responsibility for human rights violations associated with the armed conflict. The recommendation had been rejected on the ground that the President had already expressed some form of regret in December 1998, i.e. at a time when the full scale of the atrocities committed had not yet been revealed. The Government had also contended that there was no need to purge the armed forces since such a process had already taken place, albeit unknown to the public at large and in the absence of an open debate. The Government had also declined to establish the follow-up mechanism recommended by the Commission. Nor had any action been taken on the finding that genocide had been committed although Guatemala was a party to the Convention on the Prevention and Punishment of the Crime of Genocide.

65. Although many proposals could be made for a new institutional framework in Guatemala (independence of the judiciary, an end to impunity, exclusion of the military from civilian affairs, an independent mechanism to consider police complaints, freedom of expression, human rights education, involvement of women in the establishment of a new society), they would serve no purpose in the absence of the political will to carry them into effect.

66. Mr. KRETZMER said that the comment in the Committee's concluding observations on the initial report of Guatemala published in April 1996 (CCPR/C/79/Add.63) that, although the report provided information on general legislative norms in Guatemala, it largely failed to deal with the state of implementation of the Covenant in practice, seemed to be broadly applicable to the second periodic report also. It contained no real information on measures taken to address the concerns raised by the Committee in its review of the initial report.

67. The main issue aside from impunity was, in his view, the Government's failure not only to respect but also to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, especially the right to life, liberty and security of the person under articles 6 and 9. One subject of concern mentioned in the earlier concluding observations related to human rights violations by paramilitary groups, many of them linked to the State's security forces. According to paragraph 57 of the second periodic report, there were no "legally recognized" paramilitary groups in Guatemala. But the Committee was concerned about all paramilitary groups, regardless of whether they were recognized. According to reputable NGOs, the conduct of such groups was still a serious problem. Amnesty International, for example, had recently reported that Celso Balán, a human rights worker, had been detained, robbed, drugged and left unconscious by two men who appeared to be paramilitaries acting under the orders of persons who had previously been responsible for an army massacre. He asked what was being done to disband such groups and eliminate what constituted an extremely dangerous phenomenon.

68. According to paragraph 38 of the report, the Military Code had been amended so that it alone could be used in judging military crimes. Inquiring about the definition of a military crime, he asked whether, for example, the ordinary courts would hear a case in which members of the military were accused of killing innocent persons while engaged in military activities.

69. Several NGOs had reported that complications from abortion were the second most common cause of death among women because abortion was outlawed in Guatemala save where it was necessary to save the mother's life. Many women therefore resorted to illegal unsafe abortions. The Committee's position was that a State party had an obligation, regardless of its legislation regarding abortion, to protect the lives of all, even women with unwanted pregnancies. What was the State doing to ensure that the lives of those women were not endangered?

70. Article 9 (3) of the Covenant stipulated that the detention in custody of persons awaiting trial should not be the general rule. But according to the figures contained in the table following paragraph 241 of the report, roughly two thirds of the inmate population of detention facilities were awaiting trial and only about one third were serving sentences.

71. Mr. SCHEININ associated himself with Mr. Kretzmer's question regarding abortion. He also inquired about the availability of contraceptives and other methods of planned parenthood. The Committee had been informed that rural women gave birth to seven children on average and that the vast majority of indigenous women had no access to information about planned parenthood. Given the alarmingly high rate of maternal mortality, was the State party aware that women's right to life might be jeopardized under such circumstances?

72. According to the delegation, the Constitutional Court had set aside the death penalty in a number of cases on the ground of incompatibility with the Constitution or Guatemala's international treaty obligations. He wished to know whether the extension of the death penalty to cover new crimes had played a role in the Court's decisions and, if so, whether steps had been taken to amend the law accordingly.

73. If the Guatemalan authorities were committed to working towards the abolition of capital punishment, he wondered whether the exclusion of certain categories of persons or crimes from its application was the correct approach. The fact that approximately 20 per cent of the population - men aged between 18 and 60 - were now subject to capital punishment raised a problem of non-discrimination. He asked whether the Government was genuinely working towards abolition of the death penalty.

74. Mr. HENKIN expressed concern about deficiencies in the rule of law in Guatemala, as reflected, inter alia, in impunity, lynchings and disappearances. In particular, he wished to know whether any progress been made in establishing the whereabouts of Professor Mayra Gutierrez Hernández?

75. In a democratic society the military belonged in their barracks. To what extent had the Guatemalan authorities succeeded in confining them to their own sphere and to what extent did they still impinge on civilian life, for example in the administration of justice?

76. He would welcome a more precise definition of the term "paramilitary" as used in the Guatemalan context.

77. Mr. RIVAS POSADA noted that, according to the delegation, the applicability of the death penalty to cases of kidnapping and the abolition of the right of persons under sentence of death to seek a presidential pardon were of little importance in practice because the Covenant and the American Convention on Human Rights prevailed over domestic legislation. He wondered at what level the courts could refuse to sentence a person to death for kidnapping on that ground. Could any court recognize the primacy of international obligations or was that a prerogative of the higher courts? He agreed with Ms. Chanet's comment on the need to clarify the legal situation with respect to the granting of a presidential pardon. Under the present circumstances, a President who granted a pardon to a person under sentence of death could, in theory, be accused of breaking the law.

78. In cases where members of the police force or the armed forces were found guilty of criminal conduct, they should not only be discharged but also punished in accordance with the law.

79. The State party described in detail the many cases in which a state of exception could be declared but their consequences in terms of restrictions on human rights were not specified. Were the wide-ranging restrictions on basic rights and freedoms that were permissible, according to paragraph 142 of the report, under a state of siege applicable also to other states of exception. Paragraph 144 failed to mention which judicial bodies were authorized to oversee measures taken during states of exception and to receive appeals from victims on grounds of liability, amparo and habeas corpus. He asked the delegation to remedy the omission.

The meeting rose at 5.55 p.m.